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George Kuhlman
ABA Center for Professional Responsibility
541 North Fairbanks Court
Chicago, IL 60611

Dear Mr. Kuhlman:

I understand that you are considering taking a position on whether federal judges have the protections they need to enable them to mediate state court cases. As a practitioner, with the experience I believe to be relevant, I urge you to do so.

I have been trying and mediating cases for over twenty-five years. I am a member of the American College of Trial Lawyers and I primarily represent plaintiffs in employment and civil rights cases. I serve as a Commissioner for the National Conference of Commissioners on Uniform State Laws and, as such, I participated as a member of the Drafting Committee which drafted the Uniform Mediation Act. I strongly support Alternative Dispute Resolution and very much appreciate our federal judges and the lead they have taken in making mediation of our cases successful.

A plaintiff who has suffered employment loss or discrimination has more at stake than the monetary loss he or she must face. Loss of a job is a loss of self. It often cannot be remedied in money. For a federal judge to listen to a plaintiff explain what has occurred and to validate the difficulties encountered in standing up to larger forces can help the plaintiff to recognize success.

Just recently, I went to a settlement conference with a plaintiff who had been subjected to sexual harassment and wrongfully discharged by her employer when she refused his advances. She had problems with the case that were unrelated to its merits and we knew that settlement would be required. The federal judge listened, validated the plaintiff's experience, and brokered a deal. The settlement was not fair in terms of the losses this plaintiff had actually incurred, but she was ecstatic. She told me that on the way to the settlement conference she had felt like she was voluntarily putting herself in a position to be raped. On the way home, she felt like the million dollars she should have received. This plaintiff was a party to both state and federal cases because after she filed suit against her former employer, he sued her for the return of money that he had previously characterized as a gift. Both parties agreed that the federal court judges had the experience and willingness to listen that were necessary to resolve the case.

In another recent case two minority employees, one African American and one Native American, who worked cleaning hotel rooms were subjected to retaliation and discharge after they tried to stop their employer from using racial slurs (and worse). I cannot overstate what it meant to these women to have the federal judge recognize the pride they took in their work and the wrong that was done to them. The fact that a federal judge listened to them and treated them with the respect they are rarely accorded was very important to the settlement. Moreover, the judge commended them for their courage and helped them restore the pride and dignity that had been taken from them. This non-monetary benefit was a driving force in achieving the settlement which would not have occurred without a federal judge's assistance.

Oftentimes it is important to both sides to resolve cases without filing them and making the allegations the subject of a public record. Oftentimes there is a choice of forum and, in a number of situations, cases have to be filed in both state and federal court to protect all claims. Because of the stature with which a federal judge stands and the particular experience and ability of the federal judges available to us in our district, it is extremely helpful if these judges are available to mediate state, as well as, federal claims.

From my work on the Uniform Mediation Act, I know that preservation of confidentiality is key to the success of mediation. This Act was drafted for use in mediations that are not conducted by judges or judicial officers in judicial settlement conferences. It is essential that the parties who mediate with federal judges be assured of the same rules of confidentiality in judicial settlement conferences. The judges should also have the same protections that are available to mediators under the Uniform Mediation Act.

I very much appreciate your working on this important issue. If there is anything I can do to be of help, please let me know.

Sincerely,

Martha L. Walters

MLW /pj
cc: Hon. Ann Aiken

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